FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO. 1808 OF 2005.

Deepak Nitrate Ltd. ..Petitioner.
vs.
The Union of India. ..Respondents.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	Court's or Judge's orders

Shri Prakash Shah i/b DSK Legal for the petitioner.
Mrs. S.V. Bharucha for the respondent.

CORAM: V.C.DAGA & J.P.DEVADHAR,JJ.
DATED: 6-4.2005.

P.C.:

1. Heard parties.

2. Rule returnable forthwith by consent of the parties.

3. This petition is directed against the order dated 13.1.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Regional Bench at Mumbai, refusing to condone delay in filing appeal. According to the petitioner, the order-in-original No. 716 to 717/2000/CAC/MKB dated 31.8.2000 passed by the Commissioner of Customs

(Adjudication), Mumbai, was never received by the petitioners as such, they were unaware of the said order. When department started recovery in the month of October, 2004, then only petitioner claims to have acquired knowledge about the adverse order suffered by them at the hands of the Commissioner (Adjudication).

4. The petitioner filed appeal before the Tribunal along with an application for condonation of delay, after acquiring knowledge about the adverse order, contending therein; that there is no delay in presenting appeal from the date of knowledge. However, if any, delay is found in presenting appeal , then the same may be condoned on the ground that they had no knowledge about the adverse order. This submission made by the petitioner did not find favour with the Tribunal, with the result, application for condonation of delay came to be rejected on 13.1.2005.

5. Being aggrieved by the aforesaid order, the petitioner has filed this petition challenging the aforesaid order passed by the respondent.

6. There is no material placed on record by the respondent to show that the order-in-original was sent or communicated to the petitioner. Material placed before us is not sufficient to raise presumption of service. In these circumstances, in our opinion, this is a fit case where delay in presenting appeal ought to have been condoned.

7. At this stage, it will not be out of place to mention that there may be some lapse on the part of the petitioner as the petitioner did not communicate change of address. It was expected on the part of the petitioner to inform the department about change of its address. In this view of the matter, the department alone cannot be held responsible for non-communication of the order.

8. Be that as it may, considering the interest of justice, we quash and set aside the order dated 1.3.2005 and condone delay in presenting appeal subject to payment of costs quantified in the sum of Rs. 10,000/- (ten thousand), to be paid

within one week from today. On payment of costs, appeal shall stand restored to file of the Tribunal and it would be open for the Tribunal to hear and decide the appeal on its own merits in accordance with law. In the the event of non-payment of costs within stipulated time this petition shall be deemed to have been dismissed.

8. Petition stands disposed of in terms of this order with no order as to costs.

(J.P.DEVADHAR,J.) (V.C.DAGA,J.)